



Evergreen Freedom Foundation

A Nonprofit Public Policy Research Organization

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Public Disclosure Commiss

February 20, 2001

Commissioners
Public Disclosure Commission
711 Capitol Way - Rm 206
PO Box 40908
Olympia, WA 98504-0908

Re: Petitions for Amendment of WAC 390-16-309 and Repeal of WAC 390-16-311

Dear Commissioners,

Enclosed are comments favoring the petitions for amendment of WAC 390-16-309 and repeal of WAC 390-16-311 scheduled for consideration at the Commission hearing on February 27, 2001.

In 1992 Washington voters overwhelmingly supported Initiative 134 - *The Fair Campaign Practices Act*. One of the objectives of the Initiative was to reduce the influence of large organizational contributors. To accomplish this, the Initiative requires affiliated entities that are controlled by a single entity to share a single contribution limit, codified as RCW § 42.17.660(2).

In interpreting RCW § 42.17.660(2), WAC 390-16-311 exceeds its authority and amends the statute in an arbitrary and capricious fashion creating an exception to the single entity contribution limits inherent in the rule, effectively violating both the spirit and intent of the enabling statute, RCW § 42.17.660(2). *See attached memorandum.*

In order to effectuate the will of the people WAC 390-17-311 must be repealed in its entirety and WAC 390-16-309 may be amended to enforce the same. (RCW § 42.17.660(2)).

Thank you for your consideration.

Sincerely,

Jami Lund
Project Manager

Encl./



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MEMORANDUM

TO: Commissioners, Public Disclosure Commission
FROM: Jami Lund, Evergreen Freedom Foundation
DATE: February 20, 2001

RE: Petitions for Amendment of WAC 390-16-309 and Repeal of WAC 390-16-311

In 1992, Washington citizens overwhelmingly approved Initiative 134 (I-134), *The Fair Campaign Practices Act*. One of the express purposes of the act was to reduce the influence of large organizational contributors to political campaigns. I-134 would do so, in part, by limiting conglomerate organizations and their affiliated entities to a single contribution limit. (Codified as RCW § 42.17.660(2)). Thus, national, state and local affiliates would be subject to a single contribution limit.

WAC 390-16-311 undermines the intent of the statute by carving out an unauthorized exception. The PDC in adopting the WAC exceeds its authority, acting in an arbitrary and capricious manner amending by interpretation the statute to contain an exception that is not present in the enabling statute.

It must be recognized that the primary objective of statutory construction is to carry out the intent of the Legislature *as well as the will of the people*. Further, any administrative interpretation that is adopted should be the one that best advances the legislative purpose. *See Dept. of Transportation v. State Employees Insurance Board*, 97 Wn.2d 454, 645 P.2d 1076 (1982).

The WAC creates a fictional test enabling entities whose controlling 'parent' is not participating in a given candidate campaign to avoid compliance with the single contribution limit provision contained in the statute. The statute does not carve out a participation or lack of participation exception for the parent/controlling entity. In fact, the statute requires that all affiliated entities be treated as a single entity subject to a single contribution limit regardless of participation in the election.

RCW §42.17.660(2) *Attribution of contributions by controlled entities* provides:

Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association. All contributions made by a person or political committee whose contributions or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity.

The only rational interpretation of the statute subjects all controlled entities, as so defined by the statute, to a single contribution limit as evidenced by the first sentence in the statute. The second sentence defines affiliation by finances, maintenance and control. There is no exception carved out for participation or lack of the same.

Given the plain language of the statute, the exception carved out in WAC 390-16-311 should be repealed since it arbitrarily creates an unauthorized exception. Further, new rule-making procedures should be initiated to adopt a rule that effectively and faithfully interprets the statute.